

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re applications of

) MM Docket No. 93-75

Trinity Broadcasting of Florida, Inc.
for Renewal of License of Station
WHFT-TV, Miami, Florida

) File No. BRCT-911001LY

Glendale Broadcasting Company
for a Construction Permit for a New
Commercial Television to Operate on
Channel 45, Miami, Florida

) File No. BPCT-911227KE

To: Hon. Joseph Chachkin
Administrative Law Judge

DOCKET FILE COPY ORIGINAL

**FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE
SPANISH AMERICAN LEAGUE AGAINST DISCRIMINATION**

David Honig
1800 N.W. 187th Street
Miami, Florida 33056
(305) 628-3600
(202) 332-7005

Counsel for the Spanish American
League Against Discrimination

August 15, 1994

No. of Copies rec'd
List ABCDE



TABLE OF CONTENTS

INTRODUCTION	1
FINDINGS OF FACT	2
CONCLUSIONS OF LAW	2
A. TBN and Crouch Control NMTV	4
1. Who conceived of NMTV?	6
2. Why was NMTV conceived?	6
3. How were NMTV's officers and directors selected?	7
4. Did NMTV's directors perform their fiduciary duties to NMTV?	9
5. Who financed NMTV?	12
6. Who operated NMTV?	15
7. How was NMTV held out to the public?	20
8. Did NMTV operate with anything approaching the level of care and independence normally characterizing major market television licensees?	21
9. Did NMTV's actions benefit itself, or did they benefit TBN and Crouch?	22
10. Preliminary Conclusions	23
B. TBN And Crouch Abused The Commission's Processes By Using NMTV As A Front To Secure More Licenses Than TBN Could Otherwise Have Obtained	23
C. There Are No Mitigating Factors	31
D. Strong Policy Considerations Justify Denial Of The Renewal Application	32
ULTIMATE CONCLUSIONS OF LAW	34

INTRODUCTION

1. The Spanish American League Against Discrimination ("SALAD") respectfully submits its findings and conclusions on the disqualifying and comparative issues designated against Trinity Broadcasting of Florida, Inc. ("TBF") for hearing in the HDO, 8 FCC Rcd 2475 (1993).

2. SALAD does not seek the Channel 45 license. Its participation began with the filing of a petition to deny WHFT-TV's license renewal application, which alleged, inter alia, that Trinity Broadcasting Network ("TBN") and Paul Crouch ("Crouch") control National Minority TV, Inc. ("NMTV").^{1/} SALAD, a Miami-based civil rights organization, seeks to defend the interests of Miami television viewers.

3. The Bureau and the applicants will provide the Court with extensive factual presentations and extensive arguments.^{2/} SALAD will confine its presentation to capsulizing the core legal and policy principles the Court and ultimately the Commission should address.

4. SALAD did not participate in those portions of the hearing which addressed the qualifications of Glendale Broadcasting Company ("Glendale"). Consequently, SALAD expresses no opinion

^{1/} NMTV's original name was Translator TV, Inc. ("TTI"). For the sake of simplicity, SALAD refers to both entities as NMTV.

^{2/} Unlike so many cases where a license is on the line, this case was tried in the spirit of collegiality. SALAD wishes to take this opportunity to thank and commend all parties for taking the high ground.

regarding Glendale's basic or comparative qualifications.^{3/} However, the record in this case shows that TBF is unqualified for renewal of WHFT-TV, and TBN and NMTV are unqualified to hold any other licenses. If TBF is evaluated comparatively, it deserves no renewal expectancy.

FINDINGS OF FACT

5. SALAD has reviewed Glendale's Findings of Fact on the question of renewal expectancy, and it adopts them by reference herein.

6. SALAD has also reviewed, and it adopts by reference herein, Glendale's Findings of Fact on the TBF basic qualifications issues. In the interest of providing a framework for SALAD's legal analysis, SALAD's Conclusions of Law rely on core factual findings which have been proven at trial. SALAD has omitted certain matters which are redundant or not decisionally significant.

CONCLUSIONS OF LAW

7. SALAD adopts and incorporates by reference herein Glendale's Conclusions of Law on the question of renewal expectancy. Presented below are SALAD's conclusions of law on the TBF basic qualifying issues.

8. A central question in this case is whether TBN abused the minority ownership policy. However, minority ownership is not the

^{3/} See 47 CFR §1.264 (person other than an applicant may submit findings and conclusions "limited to those issues...which affect the interests of such person.")

Win or lose, Glendale has performed a tremendous public service in helping to build the record which illustrates why TBF must be disqualified. There is no precedent for weighing that contribution in deciding whether Glendale is basically qualified or comparatively superior. However, if Glendale is subjected to a forfeiture, the Commission should waive such forfeiture in light of Glendale's valuable contribution.

only basic qualifying matter. Some of NMTV's LPTV applications also contained questionable diversification preference claims.

9. Glendale's Findings and Conclusions analyze the appropriateness of these NMTV diversification preference claims. SALAD adopts that analysis by reference herein. Glendale points out that NMTV's diversification claims were predicated upon the supposed independence of Janice Crouch ("Mrs. Crouch"), the wife of TBN President Paul Crouch ("Crouch") as a TBN director, since her vote, if independent of Crouch's vote, would have left Crouch and Jane Duff ("Duff") with less than a majority of the votes on the TBN Board and thus would have entitled NMTV to LPTV diversification preferences. However, as Glendale demonstrates, Mrs. Crouch didn't act independently of her husband. Crouch obviously intended to deceive the Commission, since he personally voted his wife's proxy and thus knew her TBN board participation was not genuine. On this issue alone -- even without the minority ownership aspects of this case, NMTV must be disqualified for deliberate abuse of process.

10. The minority ownership question may logically be broken down into two major subsidiary questions:

- (1) Who controls NMTV?
- (2) If TBN and Crouch control NMTV, can TBN and Crouch be assumed to have known that claiming a minority preference for NMTV was inconsistent with the Commission's rules and policies?

11. We turn now to the first of these questions: who controls NMTV. As shown below, the record demonstrates that NMTV is an utter sham. It is a transparent minority front cynically and brazenly used by TBN to allow it to acquire and control more than twelve full power television stations and to obtain minority preferences in LPTV applications which otherwise were unavailable to

TBN. Never has so palpable a fraud been perpetrated by a Commission licensee.

A. TBN and Crouch Control NMTV

12. To locate the nexus of control of NMTV, the Court must decide whether NMTV's corporate personality has been materially distinct from TBN and Crouch.

13. The bonafides of NMTV's structure may be determined by evaluating many contributing factors. KIST Corp., 102 FCC2d 288 (1985) (Commission will look behind the corporate form to determine who is really in control of an applicant). If the preponderance of the evidence on these factors shows that NMTV is the alter ego of TBN and Crouch, and that TBN and Crouch knew and intended this, then the license renewals of all facilities controlled by TBN and Crouch must be denied.

14. The relevant time period for review should be the time between NMTV's formation (as TTI) and May 10, 1991, which was the date Dan Borowicz, later joined by several Philadelphia area Hispanic organizations, filed a petition to deny NMTV's proposed acquisition of WTGI-TV, Wilmington, Delaware (the "Wilmington Petition" official notice of the filing date requested).^{4/} The Wilmington Petition contained precisely the allegations which led to the HDO in this case, and put TBN and NMTV on notice that NMTV's bonafides were in question. NMTV engaged in some cosmetic "cleanup" work after then, including expanded ascertainties, development of

^{4/} Actually, the date should be January 28, 1989, when the Los Angeles Times published a long exposé on NMTV. M. Pinsky, "Liberal Reading of FCC Minority Rule has Helped TBN's Growth," Los Angeles Times, January 28, 1989, Metro Section, P. 1 Col. 1. That article, in TBN's home newspaper's local front page, put TBN and NMTV on notice that FCC scrutiny of NMTV's bonafides was inevitable.

one local program on NMTV's Portland station, the creation of a supposed formal note manifesting the debt owed TBN by NMTV, and the placement on the NMTV Board of persons slightly more credible (although hardly more involved) than earlier NMTV Board members. These initiatives have almost no predictive value, just as the fact that a speeder who reduces his speed to 55 with a police car on his tail is not behaving in a manner predictive of his conduct after the police have turned away. NBMC v. FCC, 775 F.2d 342 (D.C. Cir. 1985).

15. However, some predictive value can be assigned to the fact that these "cleanup" activities were often nongenuine, transitory, or programmed for failure. The police can predict a speeder's future conduct if he reduces his speed only from 90 to 80 when a police car is on his tail. Thus, while most of the discussion provided below is confined to events before the Wilmington Petition, subsequent events are sometimes mentioned to underscore TBN's failure to reform itself even after it knew that the public and the Commission were looking. Thus, for example, the Court should infer adversely to TBF that even as of the date of the hearing, TBN and NMTV still had the same attorneys, the same accounting firm, and the same engineers; that NMTV's supposedly outside board members E.V. Hill ("Hill") and Armando Ramirez ("Ramirez") still could not sign checks, and that the TBN/NMTV Agreement to Provide Business Services remained in effect. Tr. 1513; 2367-68. These matters are discussed further infra.

16. Several factors must be evaluated in order to pierce NMTV's corporate veil. Some of the factors useful in evaluating who controls NMTV include:

- (1) Who conceived of NMTV?
- (2) Why was NMTV conceived?
- (3) How were NMTV's officers and directors selected?
- (4) Did NMTV's directors perform their fiduciary duties to NMTV?
- (5) Who financed NMTV?
- (6) Who operated NMTV?
- (7) How was NMTV held out to the public?
- (8) Did NMTV operate with anything approaching the level of care and independence normally characterizing major market television licensees? and
- (9) Did NMTV's actions benefit itself, or did they benefit TBN and Crouch?

1. **Who conceived of NMTV?**

17. Paul Crouch conceived of NMTV. MMB Exhibit 5; Tr. 1568. This is always a factor in determining whether a company's structure is valid. See, e.g., Royce International Broadcasting, 5 FCC Rcd 7063 (1990), recon denied, 6 FCC Rcd 2601 (1991) ("Royce").

2. **Why was NMTV conceived?**

18. The origin of an entity frequently discloses its nexus of control. See, e.g., Moore Broadcast Industries, Inc., 60 RR2d 394, 395 (ALJ 1986) (father in law of applicant did most of the work of organizing the entity).

19. NMTV was created to benefit TBN, not itself or minorities. Crouch's reason for creating NMTV was that he wanted to seek additional translator outlets to carry TBN's programming. MMB Ex. 5; Tr. 1568. NMTV's Bylaws contain nothing regarding minority ownership or programming. Tr. 3344. TBN never planned for NMTV to be weaned away from TBN as a freestanding entity. Tr. 2025-27, 4270, 4309-10. Thus, far from being a genuine minority controlled

joint venture, by which minorities aspiring to control broadcast stations secure the noncontrolling assistance of nonminorities, NMTV was nothing more than a permanent ward of TBN.

3. How were NMTV's officers and directors selected?

20. Crouch made himself President of NMTV because TBN was the "sponsor organization" and would be lending money to NMTV. Tr. 2490-91.

21. TBN did not even resort to the usual ruse of selecting a minority as President with nonminority shareholders actually pulling the strings. Tr. 1579-82. See, eg., Metroplex Communications, Inc., 5 FCC Rcd 5610 (1990); Ocean Pines LPB Broadcast Corp., 5 FCC Rcd 5821 (Rev. Bd. 1990). Of course a sham is not rendered valid simply because it occurs brazenly, in broad daylight.

22. Crouch selected the other two initial directors specifically to obtain a minority preference. Tr. 2481-82. Their previous experience as broadcasters was not a factor; indeed, they had no broadcast management experience. See Magdalene Gunden Partnership, 3 FCC Rcd 488, 489 (Rev. Bd. 1988) (citing implausibility of passive investor giving full control of a valuable broadcast facility, created with a large investment of his funds, to someone with no real track record in broadcasting.)

23. Duff was Crouch's Administrative Assistant in 1981; in 1992, she became Assistant to the President of TBN.^{5/} TBF Ex. 101 ¶29-30; Glendale Ex. 218, p. 50; Tr. 1339, 1550-55, 1587-88. Duff

^{5/} Duff has been identified by the Los Angeles Times as Paul Crouch's secretary, earning a salary in 1987 of \$21,405. Neither she nor David Espinoza ("Espinoza"), the (then) third voting member of the NMTV Board, earned anything for their role in NMTV. M. Pinsky, "Liberal Reading of FCC Minority Rule has Helped TBN's Growth," Los Angeles Times, January 28, 1989, supra.

had a management-sounding title, but her job was that of a subordinate executing her superior's decisions. Thus, for example, she was required to submit absence reports to TBN's treasurer. Glendale Exs, 94-98 and 211; Tr. 1348-51. Duff was not empowered to act independently of Crouch.

24. Duff's role at TBN is to handle TBN applications for new facilities, the same role she plays with NMTV. Of course if NMTV were truly independent of TBN, Duff's primary work responsibility would be a massive and palpable conflict of interest. It wasn't a conflict, though, because TBN controls of NMTV.

25. Espinoza, an initial NMTV director, was a pastor and programmer on TBN. When asked to join the NMTV Board, he was in financial difficulty and TBN was his creditor; thus, TBN kept the proceeds of pledges on Espinoza's television program. Tr. 4128-30.

26. Phillip Aguilar ("Aguilar"), who replaced Espinoza as an NMTV director in August, 1990, was selected because he was a minority and because of his proximity to TBN headquarters. Tr. 2915. Like Espinoza, Aguilar was a TBN programmer. He provided volunteer phone counsellors for TBN, and TBN provided Aguilar's ministry with money and with large tracts of real property in three states. TBF Ex. 107, Tab A, pp. 3-6.

27. Thus, the directors of NMTV were TBN captives. One was Crouch's own direct subordinate, and the others did substantial business with TBN and were deeply indentured to, indebted to, and in debt to TBN. The record reveals not one occasion in which NMTV ever considered having a genuinely independent "outside" director. TBN never asserted, nor could it assert, that there are no minorities, sharing its theological outlook and qualified to oversee a medium

sized business, who are neither TBN employees nor major TBN debtors.

28. The fact that TBN knew Duff, Espinoza and Aguilar hardly bolsters NMTV's claimed independence. A front operation does not establish legitimacy by fronting a relative or employee rather than a stranger. See Arnold L. Chase, 5 FCC Rcd 1642 (1990) (real party in interest had close family ties to person being fronted.)

29. There were other NMTV officers besides Crouch, Duff and the captive minorities chosen by Crouch. TBN carefully installed five of its own employees as NMTV officers, conferring on them titles like "Assistant Secretary" or "Second Assistant Secretary." These employees were Terence Hickey, Phillip Crouch, Matthew Crouch, Charlene Williams and Allan Brown. They were installed so they could sign NMTV checks. As noted below, that privilege was denied even to NMTV board members who were not TBN employees. Crouch didn't even trust his own handpicked minorities to handle NMTV's money.

**4. Did NMTV's directors perform
their fiduciary duties to NMTV?**

30. Probably the most commonly found earmark of a sham in the Commission's cases is the presence of supposedly controlling parties who earn the applicant a preference but do not perform at anywhere near the minimum level of involvement as corporate fiduciaries. See, e.g., Carta Corp., 5 FCC Rcd 3696 (Rev. Bd. 1990) (subsequent history omitted). And no worse fiduciaries could be imagined than Espinoza and Aguilar, NMTV's board members before the Wilmington Petition.^{6/}

^{6/} As shown in Glendale's Findings and Conclusions, NMTV's subsequently named board members, Hill and Ramirez, were slightly more credible than Espinoza and Aguilar but were barely more involved as fiduciaries.

31. Espinoza missed the initial TBN Board meeting. MMB Ex. 10. For a time, he had the title of Chief Financial Officer (CFO), but understood that Duff would perform this function. He did nothing as CFO. Tr. 4179-80; 4185-87. He knew nothing of the financial arrangements for NMTV, including whether his co-directors earned salaries, how Odessa TV earnings were determined, what the terms of TBN's loan to NMTV were, what NMTV's legal expenses were, how NMTV's bookkeeping and accounting requirements were met, who signed NMTV checks, or why NMTV had no bank account until 1987. Tr. 4147-50, 4159, 4162-64, 4267-70; 4276-77, 4296. He didn't know how much the Odessa station cost, or where the sale price figure came from. Tr. 4378-79. He didn't know the duties of Phillip Crouch, Terence Hickey and Charlene Williams, TBN employees who were made Assistant Secretaries of NMTV. Tr. 4251-52, 4274, 4279-80, 4349-50. He didn't know why NMTV annual meetings were combined with those of TBN until 1987. Tr. 4254-55. He never saw legal bills or May & Dunne's retainer letter and was not made aware of their contents. Tr. 4228-29. Although he claimed he recommended LPTV communities to Duff, he could not identify a single community in which he recommended the construction of an LPTV station. TBF Ex. 105; Tr. 4384-90.

32. Aguilar was even farther out of the loop than Espinoza. When Aguilar joined the NMTV Board, he was not provided any financial information. Tr. 2914. He was unaware of any distinction between his duties as a director and his duties as a vice president. TBF Ex. 107, p. 54. After he was elected, he missed the next three meetings. TBF Ex. 101, Tab EE, pp. 25-39. When the Wilmington Petition litigation revealed that Aguilar had a prior felony conviction, Aguilar refused to cooperate with NMTV counsel, who had

to hire a private investigator -- without Aguilar's knowledge -- to obtain the necessary information. MMB Ex. 354, Tr. 2139, 3136-37. Aguilar's noncooperation was so palpable that TBN's FCC lawyers, Colby May ("May") and Joseph Dunne ("Dunne"), each recommended bringing in a fourth board member. MMB Ex. 376; Tr. 3135. Duff was also concerned about allegations of sexual abuse. Tr. 2276-79. Thus, on October 2, 1991, Hill was named as a fourth director. MMB Ex. 377. Aguilar finally resigned on April 13, 1993. TBF Ex. 107, Tab A, p. 87.

33. Following is a partial list of what Aguilar did not know; there is very little he did know.

34. Aguilar didn't know the nature of Duff's duties at TBN, the method for allocating revenues between TBN and NMTV, how often audited financial statements were prepared, any details regarding NMTV's IRS compliance audit including what a compliance audit is. He didn't know whether NMTV filed tax returns and he never saw copies. His concept of NMTV's finances was that its finances were acceptable since nobody was in danger of having to sell their houses. TBF Ex. 107, pp. 58-65; 86, 161-63, 172.

35. He didn't know how many bank accounts NMTV had, who the signatories were, and he didn't know some of the people who were authorized to sign checks. Id. at 68-74.

36. He didn't know the arrangements for legal and engineering services. Id. at 86-92.

37. He didn't know who was performing accounting functions, accounts receivable or handling payroll. Id. at 93-98.

38. He didn't know why TBN's local counsel, Norman Juggert ("Juggert") was "around a lot" or what services he provided. Id. at pp. 66, 86-87.

39. He didn't know who ran the Odessa station, or how many employees the Odessa or Portland stations had. Id. at 96-97. He didn't know whether Portland had an affiliation agreement with TBN, or how many hours of TBN programming were carried at Portland or Odessa. Id. at 99, 104-05.

40. He didn't know the financial details of the largest NMTV proposed transaction during his tenure, the Wilmington station. Id., pp. 167-68. Nor did he know how NMTV selected markets for LPTV stations. Id., pp. 194-95.

41. He didn't know where NMTV's principal office was, who elected its officers and how often they were elected; what his own duties were as vice president, or whether there was a chief financial officer. Id. at pp. 67, 74-78. He didn't read minutes of past meetings. Id. at p. 85.

42. Espinoza's and Aguilar's behavior is similar to, but far worse than the behavior of the university officials in Trustees of the University of Pennsylvania, 69 FCC2d 1394 (1978), in which the trustees of a nonprofit licensee failed to stay informed regarding the operations of the university's radio station. Espinoza and Aguilar relied upon and deferred entirely to TBN's employees and agents. Their participation in NMTV was so ephemeral that they cannot be considered true "owners" of NMTV.

5. Who financed NMTV?

43. The ability to set "policies as to finances, personnel policy and actions, or programming...are the three most important factors in determining control." News International, PLC, 97 FCC2d 349, 358 (1984) (citing Stereo Broadcasters, Inc., 87 FCC2d 87 (1981)); cf. Pacific Television, Ltd., 2 FCC Rcd 1101 (Rev. Bd. 1987), review denied, 3 FCC Rcd 1700 (1988) (limited partner

provided 99% of the financing and paid for legal counsel who prepared the application and retained engineering consultant). It is by following the money that true control is best determined, for the most effective method for controlling a business is through control of its finances. Heitmeyer v. FCC, 95 F.2d 91, 99 (D.C. Cir. 1937); see Dorothy J. Owens, 5 FCC Rcd 6615, 6617 (1990).

44. TBN entirely financed NMTV. Virtually every factor indicating financial dominance is present in this case, as illustrated below.

45. NMTV used TBN's bank account, lacking even its own bank account until June, 1987. Throughout 1987, all of the funds in NMTV's bank account were advances from TBN. Joint Ex. 1, pp. 3, 15-17; MMB Ex. 4; Tr. 1582-83.

46. At various times between 1988 and 1992, five different TBN officials were placed in positions in NMTV where they could write NMTV checks: Phillip Crouch, Charlene Williams, Matthew Crouch, and Terrence Hickey and TBN's own Treasurer, Allan Brown ("Brown"). MMB Exs. 214, 237, 386; TBF Ex. 101, Tab EE, pp. 18-19; Tr. 1836-37, 2154-55. Brown had been a signatory of some NMTV checking accounts from 1990 to 1992, even before he was an NMTV Assistant Secretary. MMB Ex. 396, p. 2, n. 12. The only directors of NMTV who have ever signed NMTV checks are TBN officials Duff and Crouch. MMB Ex. 396. Apparently, Crouch did not even trust Espinoza, Aguilar, Hill and Ramirez to write NMTV checks.

47. TBN was billed for NMTV legal work, and TBN paid NMTV's legal and engineering bills. MMB Ex. 105; Tr. 1592-96, 1607-08, 1685, 2652-54.

48. TBN's time billing agency, Media Services, also provided services for NMTV's Portland station. Tr. 2335-36.

49. Audited statements of NMTV income did not exist until 1987. NMTV was simply included in TBN statements, which often listed NMTV as a "direct affiliate" of TBN. Joint Ex. 1, pp. 4-6.

50. NMTV told the IRS that TBN was the custodian of its books and that TBN "allocates general and administrative expenses to the taxpayer." Joint Ex. 1, p. 8.

51. The Odessa purchase was financed entirely by TBN through a loan which was not reduced to writing and had no terms except that NMTV was to repay it when it got the money. Tr. 1701.

52. NMTV's loan from TBN to purchase the Portland station was not formalized until January, 1993 -- six years after it bought the station. MMB Ex. 163; Tr. 1759-60.

53. NMTV's debt to TBN is over \$5,000,000. Joint Ex. 1, p. 24. NMTV is paying TBN \$27,000 per month, derived from station income, using a formula based on zip codes imposed by TBN. Id., pp. 21-23. The maturity date for this debt was recently formalized; it is 1998. Id., pp. 26-27. By that time, at the rate NMTV is paying off the debt, the debt will still be over \$3,000,000. NMTV is thus TBN's financial captive: it can never free itself from its overwhelming debt to TBN without TBN's forbearance. Meantime, as shown infra, NMTV cannot grow except as TBN directs; for example, it cannot buy LPTVs because TBN chooses to do that, leaving NMTV to apply for new LPTV permits.

54. It must be concluded, then, that NMTV is and has always been under TBN's firm financial control. In its 14 years of existence, NMTV has never been in a position to pursue any application or acquisition except insofar as TBN was willing to finance that application or acquisition. TBN has overwhelming leverage over NMTV's affairs, including so much debt that NMTV can

never free itself. Only TBN officials handle NMTV's finances, accounting, billing and payroll, and, as shown above, NMTV's supposedly outside directors were completely out of the financial loop. In dozens of cases, similar factors have led the Commission to impute control to a party other than the applicant. See, eg., Royce, supra. These cases typically involved ingenues, typically unsophisticated applicants for new facilities. NMTV, on the other hand, held itself out as the licensee of major market facilities and as the proposed assignee of a television station in the fourth largest market. It can hardly plead innocence, ignorance, or incompetence.

6. Who operated NMTV?

55. Selection of the key operating people is a major indicator of control. See, eg., American International Development, Inc., 43 RR2d 411, 414 (ALJ 1978) (putative nonparty helped select the attorney, engineer and future staff).

56. TBN's law firm represented NMTV from the beginning. Tr. 1597. When TBN changed law firms, NMTV did too -- to the same firm. When TBN chose trial counsel, NMTV used the same trial counsel. NMTV did not have its own counsel until after the record closed.^{17/} TBN's local counsel, Juggert, a member of the TBN Board, supposedly represented both TBN and NMTV. Tr. 3648. He handled matters involving both TBN and NMTV even in instances where their interests obviously differed. For example, he represented TBN in the

^{17/} NMTV's application for a local tax exemption in Odessa, filed April 30, 1989, was signed by Eddie Roush, Jr. as "General Counsel" of NMTV. MMB Ex. 253, pp. 1, 3. Actually, NMTV had no general counsel, legal department or lawyers of its own. Roush was a local attorney hired to handle the tax exemption matter. Tr. 1873.

negotiations of the TBN/NMTV promissory note attendant to the Wilmington application, a fact he didn't even disclose to Duff. MMB Ex. 368; Tr. 3775-76. He prepared the TBN/NMTV television agreement and production agreement, again on behalf of TBN. MMB Ex. 383; Tr. 3664-65. Thus, either Juggert had an actual conflict of interest, or he acted for TBN in TBN/NMTV matters because he correctly understood that NMTV was really the same as TBN.

57. TBN's engineer did the work on NMTV's LPTV applications. Tr. 1592-93. Indeed, TBN's engineers did all of NMTV's engineering, and they were paid by TBN. Tr. 2330. The engineers also handled the selection of communities for LPTV applications for both NMTV and TBN. Glendale Ex. 210, pp. 131-32.

58. Most of the work attendant to LPTV applications was handled by the engineers. Tr. 1823. The internal processing of NMTV's LPTV applications was done by Duff, who also performed this function for TBN. Tr. 1596.

59. NMTV's public file compliance, children's programming, the "technical standards and program content" of public affairs programming, and personnel standards and practices were handled by Duff, who used TBN forms and procedures. Glendale Exs. 103, 106, 107, 109, 111, 112, 113; Tr. 1400-02, 1405-06. The employee manuals for NMTV and TBN were similar. Tr. 1456-57.

60. TBN handled payroll, financial statements, income tax returns, purchasing, data processing and accounts payable for NMTV. TBF Ex. 107, pp. 10-9-12. On January 2, 1991, NMTV and TBN entered into an "Agreement to Provide Business Services." This Agreement memorialized TBN's longstanding practice of providing bookkeeping and accounting and legal services for NMTV. MMB Ex. 337; Tr. 1428.

61. NMTV did not hire its first employee until May, 1988. Joint Ex. 1, p. 3. The initial manager at Odessa was interviewed by TBN Chief Engineer Ben Miller ("Miller"), whose judgment was relied on by Duff in deciding to hire him. Tr. 1394-95. The Portland manager was a longstanding TBN employee who heard of the opening from Miller. TBF Ex. 109, pp. 3-8. The Portland Chief Engineer was a maintenance engineer at TBN; Duff consulted with Miller regarding his qualifications and he was the only applicant considered. Tr. 1908-11.8/

62. The NMTV stations' programming was virtually identical to that of TBN owned and operated stations. Each carried local "Praise the Lord" programs and a generic public affairs program, and otherwise the entire TBN schedule. They did this because TBN felt it necessary to do some local programming to meet FCC requirements. MMB Ex. 76, p. 10.

63. The Odessa station always broadcast the entire TBN schedule. Tr. 1433. The Portland station initially did so, but later broadcast sixteen hours per week of locally produced programming (including reruns). Tr. 4404-05. However, one of these programs, "Joy in the Morning" had been produced under an agreement from TBN providing TBN, the "Sponsor", with the right to "agree upon" the program's content with NMTV. MMB Ex. 383, Section 2(a). Under the agreement, TBN can veto the announcers and the persons

8/ Thus, despite NMTV's supposed purpose of training minorities, no effort was made to seek out minorities or to look beyond TBN to find NMTV's most important employees. It is inconceivable that any legitimate minority controlled company would behave in this manner in selecting its key people. See Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 581-52 and n. 34 (1990) (citing research which documents minority owned companies' strong emphasis on hiring minorities.)

participating in the program. Id., Section 2(e). TBN could compensate NMTV for the program by reducing NMTV's outstanding debt. Id., Section 7.

64. Not until September, 1992 -- sixteen months after the Wilmington Petition -- did "Northwest Focus," a second local Portland program begin to air. And it was not until November, 1992 that "Northwest Praise the Lord" began. That program is a local version of TBN's "Praise the Lord" program. Tr. 4405, 4423-24.

65. Thus, notwithstanding NMTV's fourteen years of existence, the record does not reflect even one material function of broadcasting or operations that NMTV has become capable of handling, or has handled itself.

66. Crouch handled the 1990-1991 negotiations resulting in the proposed purchase of WTGI-TV, Wilmington. TBF Ex. 121, p. 9. The NMTV Board supposedly approved the \$4 million acquisition at the January 21, 1991 annual meeting. However, Aguilar was not present, having given Crouch a proxy. MMB Ex. 338. Thus, this supposed board approval of NMTV's largest transaction really consisted of the unsurprising concurrence of Crouch and his own Administrative Assistant.

67. NMTV relied on a letter of credit to finance the Wilmington purchase. Tr. 2118. The letter required \$3.6 million cash as security. MMB Ex. 334, p. 2. Obviously NMTV didn't have this money or any other money. However, according to Duff, NMTV was "anticipating a loan from TBN." Tr. 2119.

68. It was not until the filing of the Wilmington Petition that any formal note manifesting a financial obligation of NMTV to TBN in exchange for "loans" by TBN was prepared or executed. Tr. 2147. The note was prepared by TBN counsel. Tr. 2146-47. The note provided that in the event of default, TBN could demand payment of the entire debt. MMB Ex. 368, p. 5. However, since TBN was providing all of the money, this provision would have enabled TBN to force NMTV to deliver the station to TBN whenever TBN found such an assignment convenient; e.g., if the 12-12-12 rule were lifted. Furthermore, one of the events of default was a change in control of NMTV. Id. This provision also prevented NMTV's minority directors from electing enough outside directors to shift control away from TBN or Crouch, since such an action would have forced the entire debt to come due and thrown NMTV into bankruptcy. The arrangement was a "no-cut contract", in the words of Georgia Public Telecommunications Commission, 6 FCC Rcd 2841, 2860 (ALJ 1991) (stockholder subject to being involuntarily bought out if he did not perform favorably in generating station profits; application held to be a sham); see also Doylan Forney, 3 FCC Rcd 6330 (Rev. Bd. 1988), aff'd, 5 FCC Rcd 5423, 5424 (1990) (limited partner with the power to take the station from a general partner without consent had more than a passive interest).

69. Thus, NMTV has been entirely dependent on TBN for its operations. This type of phony set-up has repeatedly figured in cases in which the locus of control must be imputed to someone other than the applicant. See, e.g., Goodlettsville Broadcasting, Inc., 6 FCC Rcd 5651 (Rev. Bd. 1991) (subsequent history omitted).

7. How was NMTV held out to the public?

70. It can be very revealing how an entity describes itself to the public when the entity is not focused on what the FCC might think. See, eg., Jarad Broadcasting, 1 FCC Rcd 181, 192 ¶15 (1986) (admonishing FM applicant for brochure identifying itself as the owner of a radio station at a time when the comparative proceedings were still underway).

71. TBN's Fundraising materials from 1981-84 did not distinguish between TBN and NMTV (then TTI). MMB Ex. 39; MMB Ex. 43, p. 6; MMB Ex. 49, p. 18; MMB Ex. 53, p. 12; MMB Ex. 56, p. 10; Tr. 2540-42. Espinoza was identified in a TBN fundraising newsletter in 1982 as a board member of "our satellite division." MMB Ex. 53, p. 11; MMB Ex. 56, p. 9; MMB Ex. 66, p. 5; MMB Ex. 76, p. 5. Crouch reported in a 1988 fundraising newsletter that the Portland station would be operated by NMTV, "an affiliated corporation of which I am President." MMB Ex. 181, p. 1. That document did not even mention the two minority directors. Id.

72. These incomplete and misleading statements to the general public cannot be blamed on an erratic functionary, for similar omissions also characterized NMTV's filings with taxing authorities. NMTV's (TTI's) application for an IRS tax exemption, nor several supplements thereto, mention any minority purpose. MMB Ex. 13 p. 2; MMB Exs. 27, 30, 31, 35 and 36. NMTV's April, 1989 application for a local tax exemption in Odessa described NMTV as an "affiliate" of TBN and described NMTV's purposes in a seventeen page exhibit. Nowhere in that exhibit was any mention made of any minority-related purpose of NMTV. MMB Ex. 253.

8. Did NMTV operate with anything approaching the level of care and independence normally characterizing major market television licensees?

73. The earmark of corporate legitimacy is the absence of intermingling with another corporation, especially one which might be thought dominant. NMTV fails this test miserably.

74. NMTV's Bylaws are similar to TBN's. TBF Ex. 101, Tab D, pp. 14-15; Tab E, pp. 15-17. NMTV's address is TBN's address, both in practice and in its Bylaws. TBF Ex. 101, Tab D, P. 1.

75. NMTV's Bylaws state that its minute book is to be kept by its Secretary; however, it is actually kept by TBN's local counsel. Tr. 3723.

76. An NMTV LPTV application for Crestline, CA, filed November 21, 1980, listed local TBN counsel Juggert as an NMTV officer and director and did not mention Espinoza as an officer. MMB Ex. 17.

77. TBN and NMTV held joint board meetings each year from 1982-87. MMB Exs. 48, 55, 70, 91, 101 and 124; Tr. 1626.

78. There were fourteen instances (apart from those manifested by legal bills directed to TBN for NMTV work) in which letters and memos concerning NMTV business were written using TBN's letterhead. MMB Exs. 20, 33, 120, 126, 177, 229, 242, 286, 360, 361, 362, 363, 391 and 409. In six of these instances, and in two others not involving TBN letterhead, the documents concerned NMTV business but were signed in a TBN capacity. MMB Exs. 33, 37, 120, 126, 177, 229, 242 and 245.

79. This level of intermingling is so extensive that it could not have been the product of accident or inadvertence. TBN, Crouch and Duff simply did not behave as though they believed that NMTV had a corporate personality independent of TBN.

**9. Did NMTV's actions benefit itself,
or did they benefit TBN and Crouch?**

80. Perhaps the most powerful indicator of control is the presence of conflicts of interest so obvious that no sentient mammal could miss them.

81. There are plenty of such conflicts here, some involving lawyers Juggert, May and Dunne, who represented both TBN and NMTV in transactions in which their interests differed. But even more palpable is the conflict arising from the original purpose of NMTV: to apply for new LPTV licenses. It was Crouch's intention that TBN would purchase LPTV stations but NMTV would seek new LPTV licenses, invoking the minority preference. Crouch conceded that this was a conflict of interest. Tr. 2687-89. Indeed, NMTV has never applied for a license in a community that already had significant over the air TBN service. Tr. 1744-45. And the only occasions on which NMTV could contemplate purchasing a station was when TBN needed the Mickey Leland Rule (discussed infra). Thus, even though NMTV was deeply in debt to TBN, it could not pursue normal business strategies of station (especially LPTV) acquisitions. Nor could NMTV diversify its holdings in ways which might not necessarily involve TBN.

82. When NMTV sold its Odessa television station in 1991, NMTV agreed to forgive the \$650,000 debt. MMB Ex. 412. The only beneficiary of this decision was TBN, which was thus enabled to retain a local affiliate. At the time, NMTV itself was in debt.

Thus, NMTV's decision not to foreclose on the station was irrational unless NMTV's intention was simply to benefit TBN. MMB Ex. 412; Tr. 3047-48.

Preliminary Conclusions

83. It doesn't take a rocket scientist to figure out that NMTV has absolutely no corporate personality apart from TBN's, and has no purpose other than allowing TBN to obtain through the minority ownership policies what it could not obtain on its own. On every single indicia of control -- formation, purpose, selection of officers and directors, behavior of the directors, finances, operations, holding out to the public, intermingling, and conflicts of interest, NMTV behaved completely unlike a genuine and independent entity. On very rare occasions, it may have feebly shaken its corporate tail. But loose tailfeathers do not make a duck.

84. After fourteen years, NMTV has not even begun to wean itself from its mother, TBN. TBN never intended that it do so. NMTV may be TBN's "child" but normal children eventually grow up. NMTV is the Michael Jackson of broadcasters: it is permanently a child.

**B. TBN And Crouch Abused The Commission's Processes
By Using NMTV As A Front To Secure More Licenses
Than TBN Could Otherwise Have Obtained**

85. NMTV's only reason for existence was to enable TBN to exploit the minority preference to acquire more stations. That is why NMTV never bought a station except to enable TBN to exceed the 14 station requirement, and only applied for new LPTV permits to claim minority and diversity) preferences otherwise unavailable to TBN.